



STATE MINING AND GEOLOGY BOARD

EXECUTIVE OFFICER'S REPORT



ARNOLD
SCHWARZENEGGER
GOVERNOR

For Meeting Date: July 10, 2008

Agenda Item No. 3: Consideration of Issuance of a 45-Day Notice of Deficiencies to Siskiyou County.

INTRODUCTION: Siskiyou County is one of the relatively larger surface mining counties in California. The State Mining and Geology Board (SMGB) received a public complaint, dated June 12, 2007, from an adjacent land owner for a surface mining operation located in Siskiyou County (County). It was alleged that the operation had been in a state of non-compliance with the Surface Mining and Reclamation Act of 1975 (SMARA), and the County, acting as lead agency, had failed to adequately enforce SMARA and bring this site into compliance. Since such time, the SMGB has received public complaints for two additional surface mining operations located in the County. At its May 8, 2008, regular business meeting, the SMGB received a report on a preliminary review of the County's SMARA program. In anticipation of considering issuance of a 45-Day Notice of Deficiencies (Notice), the SMGB subsequently requested that the County provide at the SMGB's upcoming July 10, 2008, regular business meeting a program that would improve the County's overall performance as a lead agency.

STATUTORY AUTHORITY: Article 1, General Provisions, of the Surface Mining and Reclamation Act provides in Section 2712 the following:

It is the intent of the Legislature to create and maintain an effective and comprehensive surface mining and reclamation policy with regulation of surface mining operations so as to assure that:

(a) Adverse environmental effects are prevented or minimized and that mined lands are reclaimed to a usable condition which is readily adaptable for alternative land uses.

(b) The production and conservation of minerals are encouraged, while giving consideration to values relating to recreation, watershed, wildlife, range and forage, and aesthetic enjoyment.

(c) Residual hazards to the public health and safety are eliminated.

Article 5 of SMARA, Reclamation of Mined Lands and the Conduct of Surface Mining Operations, provides in part, in Section 2774.1(f) that:

The lead agency has primary responsibility for enforcing this chapter and Section 2207.

PRC Section 2774.4 (SMARA) provides that if a lead agency fails to perform specific responsibilities to enforce the Act, or performs those responsibilities deceptively, then the responsibility for enforcing



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the Act shall be assumed by the SMGB. Prior to any assumption of a lead agency's SMARA authority by the SMGB, the Board must first notify the lead agency of any identified deficiencies, and allow the lead agency 45 days to correct the deficiencies to the satisfaction of the Board.

Pursuant to Public Resources Code (PRC) Section 2774.4(a), *"If the board finds that a lead agency either has (1) approved reclamation plans or financial assurances which are not consistent with this chapter, (2) failed to inspect or cause the inspection of surface mining operations as required by this chapter, (3) failed to seek forfeiture of financial assurances and to carry out reclamation of surface mining operations as required by this chapter, (4) failed to take appropriate enforcement actions as required by this chapter, (5) intentionally misrepresented the results of inspections required under this chapter, or (6) failed to submit information to the department as required by this chapter, the board shall exercise any of the powers of the lead agency under this chapter, except for permitting authority."*

Thus, there are six categories of violations listed in PRC Section 2774.4(a) under which the SMGB may find a lead agency needs to take corrective actions. These six categories are:

- Category [1]** A lead agency has approved reclamation plans or financial assurances which are not consistent with SMARA;
- Category [2]** A lead agency has failed to inspect or cause the inspection of surface mining operations as required by SMARA;
- Category [3]** A lead agency has failed to seek forfeiture of financial assurances and to carry out reclamation of surface mining operations as required by SMARA;
- Category [4]** A lead agency has failed to take appropriate enforcement actions as required by SMARA;
- Category [5]** A lead agency has intentionally misrepresented the results of inspections required under SMARA;
- Category [6]** A lead agency has failed to submit information to the Department of Conservation as required by SMARA.

BACKGROUND: Pursuant to the SMGB's Administrative Procedure No. PP96-02, when the SMGB receives a public complaint pertaining to the overall performance of a lead agency under SMARA, a determination is quickly made as to whether immediate action is required. Immediate action is defined as a *"situation where a lead agency does not act to assure SMARA compliance and irreparable environmental damage or substantial endangerment to the public health appears imminent"*. When immediate action is not considered necessary, a technical review by the Department of Conservation, Office of Mine Reclamation (OMR) and/or discussion of the violation(s) at the SMGB's next Regular Business Meeting may be undertaken.

Since June 2007 the SMGB received public complaints for three surface mining operations located in the County: Timberhitch Pits, Truck Village, and Kidder Creek Mine. A brief synopsis of the issues concerning each site is provided below.

Timberhitch Pits (CA Mine ID #91-47-0055): On June 12, 2007, the SMGB received a written public complaint from an individual who owns land which is occupied in part by a surface mining operation known as Timberhitch Pits. It was alleged that the operation has been in a state of non-compliance with SMARA, and the County acting as lead agency has failed to adequately enforce SMARA and bring this site into compliance. On June 26, 2007, the SMGB requested assistance from the Department of Conservation to determine whether the County initiated the appropriate enforcement actions to correct any outstanding violations, and whether the County is effective in ensuring compliance pursuant to SMARA. The SMGB at its March 13, 2008, regular business meeting received a report from OMR on enforcement actions for the Timberhitch Pits site. It was reported that the site became idle in September 2002, with post-1975 surface mining disturbance exceeding the permitted acreage, and debris, mining equipment, vehicles, and waste oil storage tanks and drums dispersed on the site. Enforcement actions were initiated by the County in August 2006. Although a Notice of Violation (NOV) was issued by the County on August 10, 2006 and an Order to Comply (OTC) on October 10, 2006 followed by a second OTC in August 2007 (subsequent to OMR issuing a 15-day Notice to the County on August 13, 2007), no administrative penalty has been issued by the County and the site remains unreclaimed.

Truck Village Quarry (CA Mine ID #91-47-0056): In 1999, a reclamation plan was approved for this surface mining operation which encompassed about 15 acres. It is alleged that that sometime during 2001 or 2002 the operator commenced surface mining operations on adjoining (unpermitted and outside the footprint of the approved reclamation plan) property by operating a rock crusher on such property, followed by several years of material extraction, processing and storage of relatively large material stockpiles for subsequent sale to customers which include contractors for public works projects. It was also alleged that the County failed to take appropriate enforcement action on the unpermitted quarry operation, creation of an unfair business practices environment in which legal quarry operators are left at a financial disadvantage, among numerous other violations. The alleged violations have led local citizens to claim *"loss of citizen trust and respect or faith that their welfare will be protected by any level of government."*

Kidder Creek Mine (CA Mine ID #91-47-0018) and Nash Pit (CA Mine ID #91-47-0057): On June 12, 2008, the SMGB received a public complaint regarding the County's lack of enforcement of SMARA. Notably, the complaint alleges that the County allowed the operator of the Kidder Creek Mine to file Mining Operation Annual Reports for past years, and administratively approved an amended reclamation plan in 2007, although the site became idle in 1993. In addition, the

complaint alleges that the County issued a Use Permit and Reclamation Plan in 2002 for the neighboring Nash Pit site, following several years of litigation, even though the site was deemed abandoned since no IMP was ever required by the County.

County's Response: At the SMGB's May 13, 2008, regular business meeting the Executive Officer provided a preliminary report on the County's SMARA program. The SMGB decided to defer action until its upcoming regular business meeting scheduled for July 10, 2008.

On June 11, 2008, the Executive Officer met with County representatives to discuss their overall SMARA program and many of the apparent deficiencies. Since receipt of the initial public complaint in June 2007, the County, as indicated in their June 25, 2008, correspondence, has implemented the following actions:

- The County conducted an internal self audit which revealed that while inspections are being performed, the quality of the inspection does not meet standards, and determined that it lacked the resources to implement the program in accordance with program standards.
- The County sent a letter to mine owners and operators inviting them to attend a meeting on June 18, 2008, regarding the May 13, 2008, Executive Officer's preliminary report, the ramifications of the report to the County and mine operators, and the decision the County needed to make regarding continuing as a Lead Agency pursuant to SMARA.
- The County has taken some enforcement actions, albeit limited, pertaining to certain sites.

ANALYSIS: Siskiyou County is one of the relatively larger surface mining counties in California. In review of the OMR SMARA database, materials produced include sand and gravel, rocks, cinders, bituminous rock, pumice, dimension stone and gold (placer and lode). There has been no mineral land classification studies performed for the County.

Based on information provided by OMR, the County has about 43 mines within its jurisdiction, of which 34 are currently active, 4 are closed with no intent to resume, 2 are newly permitted, and 3 are noted as idle.

As reported in the SMGB's Information Report 2007-01, as of 2005, about 75 percent of the surface mines within the County's jurisdiction were inspected, and about 29 percent of the financial assurances reviewed. As of 2006, about 98 percent of the surface mines had been inspected, with only 19 percent of the sites having had their financial assurances reviewed.

A preliminary review of the current status for all surface mines located within the County's jurisdiction was performed. Certain parameters indicative of overall SMARA lead agency performance were evaluated. These parameters reflect upon those minimal activities required by all SMARA lead agencies such as conduct of inspections at least once each calendar year, review and adjustment of financial assurance cost estimates, and enforcement actions. In addition, certain substantial



deviations from the approved reclamation plan, and those mines initially reported as idle which have since become abandoned, whether that was the operator's intent or not (i.e., no Interim Management Plan (IMP) in place), were also noted. In addition, the average reclamation cost per disturbed acre was evaluated to serve as a general indicator as to whether such costs are reasonable or otherwise significantly lower than amounts established elsewhere throughout the state.

SMARA Mine Inspections: Pursuant to PRC Section 2774(b), SMARA requires that all surface mines be inspected at least once each calendar year. Based on review of 2007 Mining Operation Annual Reports, a total of 23 surface mine sites, or 53 percent of all sites within the County that required inspection, did not have inspections performed. Furthermore, inspection reports submitted by the County often exclude quantitative information and thus do not adequately reflect actual site conditions and whether or not the site is in compliance with SAMRA, its approved reclamation plan, and conditions of approval.

Financial Assurance Annual Review and Adjustment: Pursuant to PRC Section 2773.1(a)(3) SMARA requires that the financial assurance cost estimate for all surface mining operations be reviewed and adjusted annually, as appropriate. For year 2007, a total of 41 surface mine sites, or 95 percent of all sites within the County, required their financial assurance cost estimates to be reviewed and adjusted, but such reviews were not performed.

SMARA Inspection and Financial Assurance Review and Adjustment: As of April 2008, a total of 22 surface mine sites, or 51 percent of the surface mine sites within the County, that required both an inspection and financial assurance cost estimate review and adjustment for year 2007, had not yet received inspections or financial assurance cost estimate reviews or adjustments.

Reclamation Cost per Disturbed Acre: Financial assurance amounts vary from as low as \$1,000 up to \$64,543. The financial assurance amount per disturbed acre ranged from \$192.30 to \$10,756.00. Excluding four specific sites where the financial assurance amounts were significantly larger than what was deemed adequate (i.e., reflective of financial assurance amount for total reclamation costs in lieu of an amount solely for disturbed acreage), the upper range is on the order of \$5,492.25, with an average amount on the order of approximately \$1779.62 per acre. Including all 32 sites where both an approved financial assurance amount and amount of disturbed acreage was reported, the average cost for reclamation of disturbed acreage was \$2,866.81. OMR has historically used \$5,000 per acre as a general and reasonable cost for reclamation of land disturbed by surface mining with a proposed end use as open space.

Enforcement: A preliminary evaluation of enforcement related activities was reviewed in regards to off-site encroachment beyond the approved reclamation plan boundary, and commencement of reclamation in situations where a mine characterized as idle became abandoned since no IMP was submitted by the operator and subsequently approved by the County in a timely manner.

Off-site Encroachment from the Approved Reclamation Plan Mining Footprint:
Encroachment beyond the boundaries of an approved reclamation plan is deemed a substantial deviation and the respective inspection reports should reflect such occurrences as a violation. The Lead Agency under such circumstances subsequently issues a Notice of Violation (NOV) to encourage compliance. Seven out of 43 surface

mining operations (16 percent) have reported disturbed acreage in excess of the amount of acreage set forth in their respective approved reclamation plan. Overall, about 78 to 83 acres outside the approved reclamation plan footprint for 8 sites are noted as disturbed. These surface mining operations, and associated disturbed and approved acreages, are:

- Hart Quarry (CA Mine ID #91-47-0001) reports 30 disturbed acres out of an approved 7 acres.
- Wolford Pit (CA Mine ID #91-47-0005) reports 9.25 acres out of an approved 7.8 acres.
- Yreka Transit Mix, Inc. (CA Mine ID #91-47-0009) reports 40 disturbed acres out of an approved 35 acres.
- Hopkins Pit (CA Mine ID #91-47-0019) reports 10 disturbed acres out of an approved 7.9 acres.
- Menne Pit (CA Mine ID #91-47-0033) reports 22 disturbed acres out of an approved 4 acres.
- M1 South Pit (CA Mine ID #91-47-0039) reports 2.24 disturbed acres out of 2 approved acres.
- Truck Village Quarry (CA Mine ID #91-47-0056) reports 15 disturbed acres out of 15 approved acres. However, review of aerial images of the site clearly shows approximately 25 to 30 acres as being disturbed.
- Soda Springs Quarry (CA Mine ID #91-47-0061) reports 30 disturbed acres out of 10.90 approved acres.

Idle Mines: Three mines are noted as idle.

- Silva Quarry (CA Mine ID #91-47-0002) was idle as of December 1, 2002, and subsequently certified reclaimed by the County in December 3, 2004.
- The Kidder Creek Mine (CA Mine ID #91-47-0018) encompasses a reported 5 acres, and was reported as idle on December 12, 2001. The reclamation plan and financial assurance amount is noted as pending. This mine is characterized as a streambed mining operation. There is no IMP in place, reclamation is noted as not started, and the site is now deemed abandoned.



- Timberhitch Pits (CA Mine ID #91-47-0055) encompasses a reported 5 acres, and is reported as idle since September 15, 2002. The reclamation plan was approved on March 3, 1993, with a financial assurance instrument established for the amount of \$2,600 on May 1, 2002, and last reviewed by the County on July 21, 2006. There is no IMP in place, and the site is now deemed abandoned.

Enforcement Actions: Some enforcement actions have been taken by the County, albeit limited. Notably, enforcement actions (i.e., issuance of Notice of Violation and Order to Comply) have commenced for Timberhitch Pits (CA Mine ID #91-47-0055) and Truck Village Quarry (CA Mine ID #91-47-0056), with issuance of an administrative penalty pending for Truck Village Quarry. However, no administrative penalties for any surface mining operation for non-compliance have ever been issued by the County.

AB 3098 Status: OMR periodically publishes a list of mines regulated under SMARA that meet provisions set forth under PRC Section 2717(b). This list is generally referred to as the AB 3098 List, in reference to the 1992 legislation that established it. Sections 10295.5 and 20676 of the Public Contract Code preclude mining operations that are not on the AB 3098 List from selling sand, gravel, aggregates or other mined materials to state or local agencies. For OMR to place a mining operation on the AB 3098 List, the surface mining operation must meet all of the following conditions:

- The operation has an approved reclamation plan;
- The operation has an approved financial assurance;
- The operation has filed its annual report;
- The operation has paid its reporting fee; and
- The operation has had its annual inspection by the lead agency which reflects the operation is in full compliance with the law.

The surface mining operation may be on the AB 3098 List if it has a pending appeal with the SMGB regarding its reclamation plan or financial assurance, provided its appeal has not been pending for more than 180 days.

The number of surface mining operations on or off the AB 3098 list can be indicative of overall site compliance. Thirty percent, or 13 surface mining operations within Siskiyou County are not listed, and thus, are deficient in one or more of the conditions outlined above. A total of 30 surface mine sites, or 70 percent of all sites within the County, are currently listed on the AB 3098 list.

Comparison with Other Lead Agencies: As noted in the SMGB's Information Report 2007-01 pertaining to SMARA lead agency performance, and based on 2005 data, statewide performance of lead agencies in the area of performing inspections of surface mine sites within their respective jurisdiction, at least once each calendar year, is moderate (66-75 percent), with the overall quality of such inspections inferred to be poor. Lead agencies performance in the annual review and adjustment of financial assurances was poor, averaging 29 percent, with 91 percent of the lead



agencies performing below 50 percent. Furthermore, as of 2002, overall financial assurances were un-realistically low. Enforcement of SMARA in regards to enforcement of IMPs was deemed almost non-existent.

In regards to overall performance of the County as a SMARA lead agency in 2007 in comparison with other lead agencies, current evaluation indicates:

- The County is performing below the state average in regards to completion of inspections (47 percent of the sites within the County's jurisdiction as of 2007 in comparison to the state average of 66-75 percent as of 2005).
- The County is performing significantly below the state average in regards to completion of annual review and adjustment of financial assurances (5 percent of the sites within the County's jurisdiction were reviewed in 2007 in comparison to the state average of 29 percent as of 2005).
- An evaluation of the reclamation cost per acre of disturbed land as reported by the operators on their respective annual reports reveals drastically low numbers. This is reflective of inadequate review and adjustment of the financial assurance amounts, albeit consistent with such evaluation of the cost per acre set aside for reclamation statewide.
- In regards to the County's efforts to enforce SMARA, two sites may be deemed abandoned since no IMP was submitted in a timely manner and subsequently approved by the County, and as of 2005, 20 percent of the sites within the County were noted as requiring IMPs.

FINDINGS: The following findings are offered:

- The County is performing significantly below the state average in regards to inspections (47 percent of the sites within the County's jurisdiction inspected in 2007 in comparison to the state average of 66-75 percent as of 2005).
- The County is performing significantly below the state average in regards to annual review and adjustment of financial assurances (5 percent of the sites within the County's jurisdiction reviewed in 2007 in comparison to the state average of 29 percent in 2005).
- A total of 22 surface mine sites, or 51 percent of the surface mine sites within the County, require both an inspection and financial assurance cost estimate review and adjustment for year 2007.
- An evaluation of the reclamation cost per acre of disturbed land as reported by the operators on their respective annual reports reveals drastically low numbers. This is reflective of inadequate review and adjustment of the financial assurance amounts,



albeit consistent with such evaluation of the cost per acre set aside for reclamation statewide.

- In regards to the County's efforts to enforce SMARA, 1) eight out of 43 surface mining operations (18 percent) are noted to have disturbed acreage in excess of the amount of acreage set forth in their respective approved reclamation plans, 2) two sites may be deemed abandoned since no IMP was submitted in a timely manner and subsequently approved by the County, and 3) as of 2005, 20 percent of the sites within the County were noted as requiring IMPs.
- The number of surface mining operations on or off the AB 3098 list can be indicative of overall site compliance. Thirty percent, or 13 surface mining operations, are not listed, and thus, are deficient in one or more of the conditions required to be on the AB 3098 List.
- Based on discussions held between the Executive Officer and the County, the County appears to recognize the deficiencies in its SMARA program, and has commenced enforcement actions for two surface mining operations. However, despite its best efforts, the County currently lacks the necessary resources to effectively implement SMARA. Although some improvement is anticipated by the County, such improvement over time will be slow and the County will likely require significant assistance from OMR and the SMGB.

SUGGESTED MOTION LANGUAGE: A SMARA lead agency need only fail in one of the six conditions set forth pursuant to PRC Section 2774.4(a), for the SMGB to consider commencement of the administrative process toward assumption of all or a portion of the lead agency's SMARA responsibilities and obligations, excluding permitting authority.

The SMGB may consider the following motion language:

[Should the SMGB determine that the County is making significant progress, but certain deficiencies and violations remain uncorrected, the following motion can be considered]

Mr. Chairman, I move that the SMGB, in light of the evidence presented before the Board today and contained in the Executive Officer's Report, find that the County has made a good faith effort in fulfilling its responsibilities and obligations as a Lead Agency under SMARA, and that the Board continue to monitor the County's progress.

[or]

[Should the SMGB determine that deficiencies and violations remain uncorrected and the County is failing to make progress, the following motion can be considered]

Mr. Chairman, I move that the SMGB, in light of the evidence presented before the Board today and contained in the Executive Officer's Report, direct the Executive Officer to issue a 45-Day Notice to Correct Deficiencies to Siskiyou County pursuant to Public Resources Code Section 2774.4(a)(c).

Respectfully submitted:

Stephen M. Testa
Executive Officer